

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.71.401 and 37.71.601 pertaining to)	ON PROPOSED AMENDMENT
low income weatherization assistance)	
program (LIWAP))	

TO: All Interested Persons

1. On July 2, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on June 23, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax 406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.71.401 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, DEFINITIONS (1) "Act of God" means an event caused solely by forces of nature without human involvement.

~~(1)~~ (2) "Energy burden" means the percentage of a household's income which is allocated to heating energy costs for the household's dwelling. The energy burden is calculated by dividing the household's actual or estimated annual heating costs by the household's annual income.

(3) "Weatherization related imminent threat to the health or safety of a household" means any adverse condition in a dwelling that:

(a) relates to a structure, appliance, system, or equipment that directly and significantly impacts the dwelling's energy usage or energy conservation, including but not limited to the dwelling's primary water heating and/or space heating systems; and

(b) creates a serious and immediate risk to the physical health or safety of residents of the dwelling.

(2) remains the same but is renumbered (4).

AUTH: 53-2-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE,: PRIORITIES

(1) Dwellings which have been weatherized after September 30, 1993, with U.S. Department of Energy funds or with Low Income Energy Assistance Program (LIEAP) weatherization, or Northwestern Energy free weatherization funds after January 1, 1995 are not eligible for weatherization services. LIEAP weatherization funds and/or Northwestern Energy free weatherization funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source. Except as provided in (1)(a), a dwelling is not eligible for weatherization services funded with U.S. Department of Energy (DOE) funds if the dwelling has been weatherized with DOE or Low Income Energy Assistance (LIEAP) funds after September 30, 1993.

(a) Regardless of the time limitations imposed in (1), DOE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with Northwestern Energy free weatherization (NWE) funds if the dwelling has been weatherized with NWE funds after January 1, 1995.

(a) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with LIEAP funds if the dwelling has been weatherized with DOE, LIEAP, or NWE funds within the ten years immediately preceding the date of the current application for weatherization.

(a) Regardless of the time limitations imposed in (2), LIEAP funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (3), LIEAP funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(2) through (8)(i) remain the same but are renumbered (4) through (10)(i).

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. The Low Income Weatherization Assistance Program (LIWAP) is a program administered by the Department of Public Health and Human Services (the department) that provides energy conservation measures such as the installation of insulation and the sealing of ducts to the dwellings of eligible low income families. Funding for LIWAP comes from three different sources: the U.S. Department of Energy's Weatherization Program, Northwestern Energy's Free Weatherization Program, and the U.S. Department of Health and Human Services' Low Income Energy Assistance Program (LIEAP). The primary purpose of LIEAP is to help low income households pay their home heating costs by making payments to an eligible household's fuel vendor, but state agencies that administer LIEAP are permitted to use a portion of their LIEAP allotment to provide weatherization services to households that are eligible for LIEAP. Montana currently sets aside 15% of its LIEAP allotment for weatherization services.

ARM 37.71.601(1) currently places time limits on when a dwelling that has previously received weatherization services is eligible to receive additional weatherization services. The rule provides that dwellings which have been weatherized with Department of Energy (DOE) or LIEAP funds after September 30, 1993 or Northwestern Energy free weatherization funds after January 1, 1995 are not eligible to receive additional weatherization services, although the rule provides an exception to these time limits. It provides that LIEAP weatherization funds and Northwestern Energy free weatherization funds may be used at any time to address a weatherization related imminent threat to the health or safety of the household or to replace or make cost effective modifications to the household's heating system to utilize a less expensive energy source.

The department proposes to amend ARM 37.71.601 to provide that dwellings that have been weatherized within the ten years immediately preceding the date of the current application for weatherization services may receive additional weatherization services paid for with LIEAP funds. This will allow previously weatherized dwellings to be reweatherized with LIEAP funds sooner than under the current rule. This is desirable for several reasons. Many new weatherization technologies have been developed in recent years, such as infrared thermography, dense pack insulation, new duct repair techniques, infiltration reduction, and better attic and mobile home insulations. These improved technologies can reduce in a cost effective manner the energy burdens of homes that were weatherized more than ten years ago when these technologies weren't available. Because advances are continually being made in weatherization technologies, the department believes dwellings should be eligible for reweatherization after ten years. Another reason for allowing reweatherization after only ten years is the fact that rising energy costs have made many weatherization measures cost effective that previously were not cost effective. Additionally, after ten years many weatherization measures such as weather stripping and door sweeps wear out and need to be repaired or replaced and a significant number of previously weatherized dwellings have been remodeled or damaged.

The department cannot shorten the waiting period before a dwelling can be reweatherized in all cases because of the necessity of complying with requirements of the DOE weatherization program and NWE's free weatherization program over which the department has no control. The federal regulations at 10 CFR 440.18(2)(e)(iii) governing DOE's weatherization program generally provide that DOE funds cannot be used to weatherize a dwelling that has received weatherization services paid for by a federal program (which would include dwellings weatherized with either DOE or LIEAP funds) after September 30, 1993. Thus, the provision that a dwelling that has been weatherized after September 30, 1993 with DOE or LIEAP funds is not eligible for weatherization services paid for with DOE funds must remain in the rule.

Similarly, it is the policy of Northwestern Energy that its free weatherization funds cannot be used to weatherize a dwelling that has received weatherization services after January 1, 1995. Thus, the rule will continue to prohibit the use of NWE funds to reweatherize a dwelling that received weatherization services after January 1, 2008. The shorter ten year waiting period therefore applies only to reweatherization services funded by LIEAP, not those paid for with DOE or NWE funds.

ARM 37.71.601(1) currently provides that LIEAP and NWE funds can be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source. This exception does not apply to reweatherization with DOE funds because 10 CFR 440.18(2) governing the DOE weatherization program does not allow the use of DOE funds for these reasons if the dwelling was weatherized after September 30, 1993. However, 10 CFR 440.18(e)(2)(ii) does make an exception to the time limit if a dwelling has been damaged by fire, flood, or act of God and insurance won't pay for the damage to weatherization materials. Since this exception is permitted by the DOE regulation and will benefit recently weatherized dwellings that have sustained damage to their weatherization materials from a fire, flood, or act of God the department proposes to add a new exception to the time limit for reweatherization with DOE funds.

Finally, the department is adding definitions of several terms used in ARM 37.71.601 to the LIWAP definitions rule, ARM 37.71.401. The term "weatherization related imminent threat to the health or safety of a household" is currently used in ARM 37.71.601, as discussed above, but is not defined. Also, it is necessary to define the term "act of God" which is used in the exception to the time limits provided for dwellings that have been damaged by a fire, flood, or act of God. It is necessary to define these terms in order to avoid disputes as to when the exceptions apply and ensure that the exceptions are interpreted uniformly by the offices that determine eligibility for weatherization services throughout Montana.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health

and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 10, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2008.